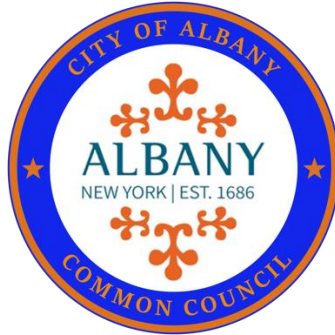


This meeting is being held in accordance to Governor Cuomo's Executive Order and other Federal and State Orders that impact in-person attendance at public meetings, if applicable orders expire or are revoked before **March 24, 2021**, this will be an in-person meeting in City Hall, please check our website and Facebook for updates. Please submit your public comment via [email](#) or on our [website](#) by **March 24, 2021 12pm**. These comments will be shared with members and/ or read for the record at the meeting. The meeting will be held using Zoom and streamed through the Albany Common Council's [Facebook](#). If we experience any technical difficulties on Facebook, the video will be streamed to [YouTube](#).



## **COMMON COUNCIL COMMITTEE MEETING**

### **PUBLIC SAFETY COMMITTEE**

**Kelly Kimbrough, Chair**

**DATE:** Wednesday, March 24, 2021

**TIME:** 5:30 PM

#### **TOPIC OF DISCUSSION:**

##### **Local Law C of 2021**

**A LOCAL LAW AMENDING ARTICLE VIIB (ALBANY POLICE DEPARTMENT INTERACTIONS) OF PART 1 (DEPARTMENT OF POLICE) OF CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF PART I (ADMINISTRATIVE LEGISLATION) OF THE ALBANY CITY CODE WITH REGARD TO THE USE OF CHEMICAL WEAPONS AND KINETIC ENERGY MUNITIONS ON CIVILIAN POPULATIONS**

##### **Local Law E of 2021**

**A LOCAL LAW AMENDING CHAPTER 357 (VEHICLES, OFF ROAD) OF THE CODE OF THE CITY OF ALBANY RELATING TO THE ILLEGAL OPERATION OF OFF-ROAD VEHICLES IN THE CITY OF ALBANY**

**PUBLIC COMMENT PERIOD:**

**Yes**

**Council Member Doesschate, Conti, Farrell, Frederick, and Hoey introduced the following:**

**LOCAL LAW C of 2021**

**A LOCAL LAW AMENDING ARTICLE VIIB (ALBANY POLICE DEPARTMENT INTERACTIONS) OF PART 1 (DEPARTMENT OF POLICE) OF CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF PART I (ADMINISTRATIVE LEGISLATION) OF THE ALBANY CITY CODE WITH REGARD TO THE USE OF CHEMICAL WEAPONS AND KINETIC ENERGY MUNITIONS ON CIVILIAN POPULATIONS**

**BE IT ENACTED by the Common Council of the City of Albany as follows:**

**Section 1.** Article VIIB (Albany Police Department Interactions) of Part 1 (Department of Police) of Chapter 42 (Departments and Commissions) of Part I (Administrative Legislation) of the Albany City Code is hereby amended by adding a new section 42-54.3 to read as follows:

**Section 42-54.3. Use of Chemical Weapons and Kinetic Energy Munitions**

**A. Use of Chemical Weapons and Kinetic Energy Munitions Policy.**

(1) The Chief of Police, or if there is one, the Commissioner of Public Safety, shall establish a written policy to prohibit the use of Chemical Weapons and Kinetic Energy Munitions by any member of the Albany Police Department on civilian populations, except for the use of pepper spray as defined herein.

(2) Prior to the establishment of such policy, the Chief of Police, or if there is one, the Commissioner of Public Safety, shall present such policy to the Community Police Review Board and shall consider any modifications as recommended by such Board.

(3) Such policy shall be consistent with the limitations in this section and shall be established within 60 days of the enactment of this law.

B. Definitions. For the purposes of this section, the following terms shall have the following meaning:

(1) Chemical Weapons. Any type of device containing toxic chemicals designed to be launched or thrown as a projectile or otherwise released in the area of civilian populations, in order to cause temporary or permanent incapacitation, injury or trauma to the intended target, through the action of such chemicals as an eye, throat, respiratory, and/or skin irritant. The term specifically includes, but is not limited to, any item commonly referred to as or having similar effects to “tear gas.”

(a) The term “chemical weapon” shall not apply to the use of pepper spray contained in liquid spray canisters of a volume no greater than 0.75 ounces when used to temporarily control a specific individual a police officer reasonably believes to be in the process of committing a crime that endangers other people and only when such agent is released in compliance with department policies and New York State law relating to the use of force and under circumstances that reasonably assure others in the vicinity are not affected by the use of such spray.

(2) Kinetic Energy Munitions. Any type of device designed to be launched from any device as a projectile, in order to cause temporary pain, injury, irritation, disability, incapacitation or trauma to the intended target. The term specifically includes, but is not limited to, any item commonly referred to as “impact rounds” or “rubber bullets.”

**Section 2. This local law shall take effect upon final passage, public hearing and filing with the Secretary of State.**

**To: Danielle Gillespie, City Clerk**

**From: Judy L. Doesschate, Common Council Member**

**Re: Request for Common Council Legislation  
Supporting Memorandum**

**Date: February 15, 2021**

**SPONSOR(S) Council Members Doesschate, Conti, Farrell, Frederick, and Hoey**

## **LOCAL LAW C of 2021**

### **TITLE**

A LOCAL LAW AMENDING ARTICLE VIIB (ALBANY POLICE DEPARTMENT INTERACTIONS) OF PART 1 (DEPARTMENT OF POLICE) OF CHAPTER 42 (DEPARTMENTS AND COMMISSIONS) OF PART I (ADMINISTRATIVE LEGISLATION) OF THE ALBANY CITY CODE WITH REGARD TO THE USE OF CHEMICAL WEAPONS AND KINETIC ENERGY MUNITIONS ON CIVILIAN POPULATIONS

### **GENERAL PURPOSE OF LEGISLATION**

To prohibit the use of Chemical Weapons and Kinetic Energy Munitions by any member of the Albany Police Department on civilian populations except for the use of pepper spray in certain situations.

### **NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXISTING LAW**

On June 12, 2020 Governor Cuomo signed Executive Order 203, entitled “Police Reform and Reinvention Collaborative,” that required the City of Albany and other municipalities to conduct a comprehensive review of its deployments, strategies, policies, procedures, and practices to address the needs of the communities serviced by its police agencies and promote community engagement *to foster trust, fairness and legitimacy, and to address any racial bias and disproportionate policing of communities of color*. The Executive Order expressly directed municipalities to examine use of force policies, racial justice in policing, de-escalation training and practices, conflict resolution, problem-oriented policing, and violence prevention and reduction interventions.

The use of chemical weapons and the militarization of our police force does not foster trust between the police and the community, increase fairness or the legitimacy of the police and does not encourage de-escalation strategies. In fact, the increasing militarization of our police is far more like to undermine trust in the police and their legitimacy.

Rather than de-escalating tense situations, tear gas usually causes panic and further chaos. As we saw last spring, rather than control the crowd, the use of tear gas not only harmed innocent residents in their homes, but also served to further anger protesters and disperse a angry crowd to do more damage across the City. Unfortunately, the damage spread mostly to areas of the City inhabited predominantly by people of color and businesses owned by or serving communities of color.

There have been thousands of protests and demonstrations in the City of Albany over the years. The anti-war demonstrations of the 60's and 70's, huge student protests, and the Springboks protest in 1981 did not result in the use of tear gas. But tear gas has not been used previously on protestors until this past May 30<sup>th</sup> through June 1<sup>st</sup> – ironically, at a time when people were calling attention to the atrocities and unfairness in the way police across the country have treated communities of color.

The use of tear gas last spring occurred in the South End and other areas of the City predominantly inhabited by people of color. Many residents had their windows open and no way to escape the fumes; or were peaceful protesters or bystanders and residents (including babies and children). **It is well established that many of these residents have asthma and other pre-existing conditions that are especially prone to severe reactions to tear gas.**

Common side effects from inhaling tear gas include pain in the eyes, skin, lungs, mouth, coughing, nausea, vomiting, chest tightness, wheezing, and shortness of breath. Long-lasting exposure can cause blindness, glaucoma, potentially fatal respiratory failure and immediate death from chemical burns to the throat and lungs according to the CDC. Infants and children are more vulnerable to tear gas and there is no way to control tear gas once it is released, so it can often harm individuals other than the intended target. Tear gas is banned from use in war by international law, but is often used as a method of crowd control against US residents.

The City of Albany Policing Reform and Reinvention Collaborative Recommendations on “Police Department Functions;” section 7, entitled “Interactions with Members of the Community,” Goal 1 specifically recommends

“Ban the use of tear gas and decrease the use of military style weaponry by the Albany Police Department.”

The report notes “the use of military equipment and force can actually endanger not only those who the police are seeking to control but those in neighborhoods, particularly neighborhoods with a significant concentration of people of color.”

The report also notes the “police have many tools at their disposal for crowd control and should rely on de-escalation techniques rather than tear gas and battle armor.”

There can be no doubt that tear gas has been used in the City of Albany in ways that have unfairly and disproportionately adversely affected communities of color, including residents in their homes, businesses, and innocent bystanders. The use of tear gas and kinetic energy munitions against residents that have the potential to cause short and long term serious health impacts should not be tolerated. By banning the use of tear gas and kinetic energy munitions, the police will be forced to adopt de-escalation policies and strategies that will lead to a less militaristic approach to policing and help foster trust between communities of color and the police as intended by Governor Cuomo’s Executive Order 203.

This legislation is intended to implement a significant recommendation of the City of Albany Policing Reform and Reinvention Collaborative, encourage the demilitarization of our police force, and increase the potential to foster trust between affected communities and the police.

#### **EXPLANATION OF DEADLINE OR REQUESTED TIME FRAME FOR PASSAGE**

Pursuant to Governor Cuomo’s Executive Order 203, the City of Albany is under an obligation to complete a comprehensive review of its deployments, strategies, policies, procedures, and practices to address the needs of the communities serviced by its police agencies and promote community engagement to foster trust, fairness and legitimacy, and to address any racial bias and disproportionate policing of communities of color and to develop a plan to address the needs of the community and promote “improved police agency and community relationships based on trust, fairness, accountability, and transparency, and which seek to reduce any racial disparities in policing, and such plan shall be adopted by April 1, 2021. The draft report of the City of Albany Policing Reform and Reinvention Collaborative Recommendations on “Police Department Functions;” section 7, entitled “Interactions with Members of the Community,” Goal 1 specifically recommends “Ban the use of tear gas and decrease the use of military style weaponry by the Albany Police Department.” It is thereby requested that this legislation be passed by April 1, 2021 or as soon thereafter as feasible.

#### **FISCAL IMPACT(S)**

None.

**Council Members Conti, Balarin, and Love introduced the following:**

**LOCAL LAW E OF 2021 (MC)**

**A LOCAL LAW AMENDING CHAPTER 357 (VEHICLES, OFF ROAD) OF THE CODE OF THE CITY OF ALBANY RELATING TO THE ILLEGAL OPERATION OF OFF-ROAD VEHICLES IN THE CITY OF ALBANY**

*The City of Albany, in Common Council convened, does hereby ordain and enact:*

**Section 1.** Chapter 357 (Vehicles, Off-Road) of Part II (General Legislation) of the Code of the City of Albany is hereby amended to read as follows:

**~~§ 357-1 Purpose and intent.~~**

~~[The Common Council hereby finds and declares that the interests of public welfare and convenience require the preservation, promotion and protection of the aesthetic and ecological aspects of the environs of the City of Albany and intends through this legislation to preserve, promote and protect the aesthetic and ecological integrity of the Pine Bush.]~~

**~~[§ 357-2 Scope.~~**

~~The provisions of this chapter, unless otherwise expressly indicated or subsequently amended, are intended to apply and shall have application to the area of the City of Albany known as the “Pine Bush.”]~~

**§ ~~[357-3]~~ 357-1 Definitions.**

For the purpose of this chapter, the following terms shall have the meanings indicated:

**~~OFF-THE-ROAD VEHICLES~~**

~~All-terrain vehicles (sometimes known as “ATVs”) as that term is defined in section 2281 (1) of the New York State Vehicle and Traffic Law, off-highway motorcycles as that term is defined in section 125-a of the New York State Vehicle and Traffic Law, motocross or dirt bikes, dune buggies, go-carts and any and all other types of motorized trail bikes or vehicles that are manufactured for sale or operation primarily on off-highway trails or for off highway competitions and are only incidentally operated on public highways. Nothing contained herein, however, shall be deemed to apply to or prohibit the use of bicycles in this area.~~

**OPERATE**

To ride in or on, other than as a passenger, or use or control the operation of an off-road vehicle in any manner, whether or not said off-road vehicle is under way.

**PUBLIC HIGHWAY**

Any highway, road, alley, street, avenue, public place, public driveway, or any other public way.

**§ ~~357-4~~ 357-2 Restrictions.**

~~[No off the road vehicles shall be used or operated on, upon, through or over the trails, trail system, dunes or other unpaved areas of the Pine Bush, the Albany Municipal Golf Course, Normanskill Farm, Tivoli Lakes, the Corning Reserve and Lower Patroon Island, Krank Park and the public lands in the vicinity of Frisbie Avenue not otherwise specifically designated or intended for vehicular traffic.]~~

A. Public Property. No person shall operate an off-road vehicle on a public highway or on any public property in the City of Albany.

B. Private Property. No person shall operate an off-road vehicle off a public highway on private property in the City Of Albany unless such person has first obtained the express consent of the owner or occupant of such property to operate the off-road vehicle on the property. There shall be a rebuttable presumption that the operator of an off-road vehicle on private property in the City of Albany lacks consent to operate the off-road vehicle on private property.

**§ ~~357-5~~ 357-3 Penalties for offenses; impoundment and redemption.**

A. Any person [~~or persons so using or operating an off the road vehicles as aforesaid~~] who operates an off-road vehicle in violation of § 357-4 (A) or (B) of this chapter shall be guilty of an offense punishable by a fine not to exceed \$650 or imprisonment not to exceed 15 days, or both.

B. In addition to the penalties set forth in subsection (A) of this section, a police officer may immediately impound an off-road vehicle that has been operated in violation of § 357-4 (A) or (B) of this chapter. Such impounded off-road vehicle shall be stored by the pertinent police department or enforcement agency pending the identification of the owner of such off-road vehicle as registered with the New York State Department of Motor Vehicles. Such title owner shall be sent notice of such impoundment at the address on file with the New York State Department of Motor Vehicles by certified mail within five days after the impoundment. Neither the police department impounding such off-road vehicle, nor the City of Albany, nor any agent nor employee thereof, shall be liable for any damages arising out of the provision of an erroneous name or address of such owner. The owner of the off-road vehicle operated in violation of § 357-4 (A) or (B) of this chapter may redeem such off-road vehicle upon satisfactory proof of ownership and payment of a redemption fee of \$2,350. An off-road vehicle impounded under this subsection shall only be released to the owner of such off-road vehicle, or to such owner's agent as evidenced by a written, notarized proof of agency, or duly executed power of attorney.



§ ~~[357-6]~~ 357-4 **Enforcement.**

The Chief of Police is charged with the enforcement of the provisions of this chapter.

§ ~~[357-7]~~ 357-5 **Severability.**

If any clause, sentence, paragraph or part of this chapter or application thereof to any person or circumstances shall be judged by any court to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof or the application thereof to other persons and circumstances but shall be confined in its operation to the clause, sentence, paragraph or part thereof and the persons or circumstances directly involved in the controversy in which the judgment shall have been rendered.

~~[§ 357-8 **When effective.**~~

~~This chapter shall take effect immediately.]~~

**Section 2.** This local law shall take effect upon final passage, public hearing, and filing with the Secretary of State.

**APPROVED AS TO FORM THIS  
9<sup>TH</sup> DAY OF MARCH, 2021**

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**Corporation Counsel**

**To: Danielle Gillespie, City Clerk**

**From: Brett Williams, Senior Assistant Corporation Counsel**

**Re: Request for Common Council Legislation  
Supporting Memorandum**

**Date: March 9, 2021**

**Sponsor(s): Balarin, Conti, and Love**

**Local Law E of 2021**

**TITLE**

A LOCAL LAW AMENDING CHAPTER 357 (VEHICLES, OFF ROAD) OF THE CODE OF THE CITY OF ALBANY RELATING TO THE ILLEGAL OPERATION OF OFF-ROAD VEHICLES IN THE CITY OF ALBANY

**GENERAL PURPOSE OF THE LEGISLATION**

The reckless operation of illegal, unregistered dirt bikes, ATVs, and other non-street legal vehicles on the streets and in the parks of Albany has been a scourge on City residents and visitors in recent years – particularly during the summer. The operators of these vehicles, usually in groups, ride with abandon over many parts of the City with no regard for traffic laws, their own well-being, or the safety of bystanders, let alone the considerable noise their vehicles generate, disturbing the peace as they maraud across the City.

While the operation of dirt bikes and ATVs is already illegal on public highways under the New York State Vehicle and Traffic Law, this law makes it explicitly unlawful to operate such vehicles on the public highways, in the public parks, or on any other private land in the City of Albany. It also expressly forbids the operation of these vehicles on private property without the express consent of the owner or occupant of such property.

This local law also allows the police to impound any vehicles used in violation of this local law, provides for a \$2,350 redemption fee, which the title owner of a vehicle impounded under this law must pay before the vehicle will be released back to the owner. Together with the maximum \$650 fine already in place for violations of Chapter 357, violators of this Chapter will now face up to \$3,000 in fines and fees for each violation.

**NECESSITY FOR LEGISLATION AND ANY CHANGE TO EXISTING LAW**

Chapter 357 of the Code, as it stands now, bans the use of “off-the-road” vehicles only “on, upon, through or over the trails, trail system, dunes or other unpaved areas of the Pine Bush, the Albany Municipal Golf Course, Normanskill Farm, Tivoli Lakes, the Corning Reserve and Lower Patroon Island, Krank Park and the public lands in the vicinity of Frisbie Avenue not otherwise specifically

designated or intended for vehicular traffic.” This law expands and clarifies the definition of “off-road vehicles” and bans their operation on public property, as well as private property without the owner or occupant’s permission, throughout the City.

This law retains the former Chapter 357’s maximum \$650 fine for a violation of the chapter, but allows the police to impound vehicles used in the commission of such violations and establishes a redemption fee, as discussed above, which vehicle owners must pay in order to receive their vehicles back.

### **FISCAL IMPACT**

This law adds a impoundment redemption fee of \$2,350 which did not exist in the former version of Chapter 357.